



U.S. Department of Justice

United States  
Southern District of New York

86 Chambers Street,  
New York, New York 10007

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February 4, 2021

**BY ECF**

Hon. Victor Marrero  
United States District Judge  
Daniel P. Moynihan U.S Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *U.S. ex rel. SW Challenger v. eviCore Healthcare*, 19 Civ. 2501 (VM)

Dear Judge Marrero:

This Office represents the United States (the “Government”) as the real party in interest in the above-referenced case filed pursuant to the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3730.<sup>1</sup> I write respectfully to propose a date by when the Government may file a statement of interest pursuant to 28 U.S.C. § 517 to address a legal issue raised by defendant’s pending motion to dismiss. *See* Dkt. No. 22.

Briefly, on November 23, 2020, defendant moved to dismiss the relators’ second amended complaint. *Id.* Among other things, defendant asserts that relators fail to plead “an essential element” under the FCA — the “submission of a claim” — in light of how Medicare’s and Medicaid’s managed care plans are structured. *See id.* at 10–11 (internal quotation marks omitted). The Government’s anticipated statement of interest would address defendant’s view on what qualifies as a “claim” under the FCA and explain how different types of submissions in the managed care context fit within the statutory definition.

As the real party in interest in FCA cases, *see U.S. ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 934 (2009), the Government has a in the application of this statute. Here, that interest is amplified because Congress amended the FCA in 2009, in part, to clarify the definition of a “claim,” *see* Pub. L. 111-21 § 4 (2009), which defendant’s motion has put at issue. Accordingly, I respectfully request that the Court permit the Government to file a statement of interest on this issue no later than Monday, February 22, 2021.

Before submitting this letter, I conferred with relators’ counsel and defendant’s counsel and obtained their consent to this request. Defendant’s counsel also asked me to request that, in the event the proposed due date for the statement of interest is approved, the Court extend the due date for defendant’s reply to March 15, 2021, *i.e.*, three weeks after

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<sup>1</sup> As the Court is aware, the Government declined intervention in this *qui tam* case, and this case was unsealed in June 2020. *See* Dkt. No. 6.

February 22, so that defendant can address any point raised in the Government's statement of interest.

I thank the Court for its consideration of this letter.

Respectfully,

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All Counsel of Record

The request at Dkt. No. 33 is granted. The Government may submit a statement of interest by 2/22/21. Defendant's reply is hereby extended to 3/15/21.

**SO ORDERED.**

2/5/2021

**DATE**

  
VICTOR MARRERO, U.S.D.J.